

No.

CA - 10 00123 JW

PVT

UNITED STATES DISTRICT COURT

FILED

2010 FEB 24 P 3:04

FILED BY ORDER
OF THE COURT

NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA - SAN JOSE

SAN JOSE DIVISION

THE UNITED STATES OF AMERICA

vs.

NICOLE BERMUDEZ

INDICTMENT

COUNT ONE:

18 U.S.C. § 371 - Conspiracy

COUNTS TWO - SIX:

18 U.S.C. § 1343 - Wire Fraud

COUNTS SEVEN - TWELVE:

18 U.S.C. § 1957(a) - Engaging in Monetary
Transactions in Property Derived from Specified
Unlawful Activity

A true bill.

Jim Bonar

Foreperson

Filed in open court this 24 day of Feb,

A.D. 2010

[Signature]
United States Magistrate Judge

Bail. \$ No Bail Arrest Warrant

DOCUMENT NO.	COPY
INITIALS	
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DISTRICT COURT CRIMINAL CASE PROCESSING	

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11/28/10

JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney

FILED

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SEALED BY ORDER
OF THE COURT

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CAL. SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICOLE BERMUDEZ,

Defendant.

CR No 10 00123

VIOLATIONS: 18 U.S.C. § 371 –
Conspiracy; 18 U.S.C. § 1343 – Wire Fraud;
18 U.S.C. 1957(a) – Engaging in Monetary
Transactions in Property Derived from
Specified Unlawful Activity; 18 U.S.C. §
981(a)(1)(C) and 28 U.S.C. § 2461(c) –
Forfeiture of Fraud Proceeds; and 18 U.S.C.
§ 982(a)(1) – Money Laundering Forfeiture

SAN JOSE VENUE

INDICTMENT

The Grand Jury charges:

The Scheme and Artifice to Defraud

At all times relevant to this Indictment:

1. Defendant Nicole Bermudez (“Bermudez”) resided in Buford, Georgia.
2. On or about February 12, 2009, Bermudez completed and signed an Internal Revenue Service (“IRS”) Form 4419 (Application for Filing Information Returns Electronically) (“FIRE”) to obtain a Transmitter Control Code (“TCC”), a five-character code used to electronically transmit information returns to the IRS.
3. On February 18, 2009, the IRS approved Bermudez’s application and assigned her TCC code “FIRE TCC 50E28.”

1 4. On March 31, 2009, Bermudez began submitting false and fraudulent information
2 electronically to the IRS using her TCC code on behalf of a known co-conspirator, Seth
3 Sundberg. Bermudez electronically submitted the following false and fraudulent information,
4 among approximately seventy-six fraudulent transmissions, to the IRS using the FIRE system:

5 a. On April 14, 2009, Bermudez reported that taxpayer Seth Sundberg had
6 received \$789,400.00 in Original Issue Discount ("OID") income from GMAC Mortgage Co.;

7 b. On April 14, 2009, Bermudez reported that taxpayer Seth Sundberg had
8 received \$789,400.00 in OID income from Paul Financial LLC;

9 c. On April 29, 2009, Bermudez reported that taxpayer Seth Sundberg had
10 received \$450,000.00 in OID income from Washington Mutual Bank;

11 d. On April 29, 2009, Bermudez reported that taxpayer Seth Sundberg had
12 received \$176,400.00 in OID income from Countrywide Home Loans;

13 5. As a result of the false statements and claims she made on behalf of Seth
14 Sundberg, Sundberg claimed and received on his 2008 tax return, a tax refund in the amount of
15 \$5,083,609.25.

16 COUNT ONE: (18 U.S.C. § 371 - Conspiracy)

17 6. Paragraphs 1 through 5 are realleged and incorporated as if fully set forth here.

18 7. On or about and between February 12, 2009 and August 15, 2009, in the Northern
19 District of California, and elsewhere, the defendant,

20 NICOLE BERMUDEZ,

21 did knowingly and intentionally conspire to commit offenses against the United States, namely,
22 mail and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343.

23 Overt Acts Committed in Furtherance of the Conspiracy

24 8. On April 15, 2009, an unindicted coconspirator, identified in this indictment by
25 his initials R.S.B., sent the defendant an e-mail asking about the commission she charged for
26 submitting false information through the FIRE system to the IRS to assist taxpayers in receiving
27 fraudulent tax refunds: "Can we go 20% on the 1st Million and if we are fortunate to have a
28 refund greater than 1 Million can we go 10% on every Million after the first? I figured it was

1 worth asking.”

2 9. On April 15, 2009, the defendant responded to R.M.B.’s request, stating, “That
3 agreement is fine. Just please write that on bottom of our agreement. By the way I will do the
4 same for Seth.”

5 10. On June 3, 2009, after Mr. Sundberg received a tax refund check in the amount of
6 \$5,083,609.25, the defendant wrote Mr. Sundberg an e-mail stating, “Seth, I’m so glad for you
7 and there is a great deal of hard work and success coming ^{Jim BONAN} your way. That is for sure. But it will
8 be fun. I appreciate you following through on our agreement very much.” The defendant also
9 provided Mr. Sundberg with her Community First Bank account information including account
10 and routing numbers.

11 11. On June 4, 2009, Seth Sundberg wired \$801,000.00 from his account at Borel
12 Bank located in San Mateo, CA to the defendant’s account at Community First Bank located in
13 Seneca, GA.

14 COUNTS TWO THROUGH SIX: (18 U.S.C. § 1343 - Wire Fraud)

15 12. Paragraphs 1 through 5 and 8 through 11 are realleged and incorporated as if fully
16 set forth here.

17 15. On or about the dates listed below, in the Northern District of California, and
18 elsewhere, the defendant,

19 NICOLE BERMUDEZ,

20 having devised and intending to devise a scheme and artifice (A) to defraud as to a material
21 matter, and (B) to obtain money by means of materially false and fraudulent pretenses,
22 representations, and promises, for the purpose of executing such scheme and artifice and
23 attempting so to do, did knowingly cause to be transmitted by a wire communication certain
24 writings, signs, signals, and pictures, namely, the following:

<u>Count</u>	<u>Date</u>	<u>Wired From</u>	<u>Wired To</u>	<u>Amount</u>	<u>Fraudulent Expense</u>
2	4/14/09	FIRE TCC 50E28 Buford, GA	IRS Martinsburg Computing Center ("MCC") located in Kearneysville, West Virginia	\$789,400	alleged OID income from GMAC Mortgage Company
3	4/14/09	FIRE TCC 50E28 Buford, GA	MCC	\$789,400	alleged OID income from Paul Financial LLC
4	4/29/09	FIRE TCC 50E28 Buford, GA	MCC	\$450,000	alleged OID income from Washington Mutual Bank
5	4/29/09	FIRE TCC 50E28 Buford, GA	MCC	\$176,400	alleged OID income from Countrywide Home Loans
6	6/4/09	Borel Bank San Mateo, CA	Community First Bank, Seneca, SC	\$801,000	payment for submitting fraudulent FIRE system information

All in violation of Title 18, United States Code, Section 1343.

COUNTS SEVEN THROUGH TWELVE: (18 U.S.C. § 1957(a) - Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity)

16. Paragraphs 1 through 5 and 8 through 11 are realleged and incorporated as if fully set forth here.

17. On or about the dates listed below, in the Northern District of California, and elsewhere, the defendant,

NICOLE BERMUDEZ,

did knowingly engage in a monetary transaction by, through, and to a financial institution, affecting interstate commerce, in criminally-derived property of a value greater than \$10,000, said property having in fact been derived from specified unlawful activity, namely, wire fraud:

<u>Count</u>	<u>Date</u>	<u>Amount</u>	<u>Transaction</u>
7	6/5/09	\$600,000	wire transfer to CNM Renovators
8	6/9/06	\$12,503	purchase of cashier's check # 30035099
9	6/10/09	\$20,000	purchase of cashier's check # 30035109
10	8/3/09	\$26,440.11	purchase of cashier's check # 30035363
11	8/3/09	\$26,440.11	purchase of cashier's check # 30035365
12	8/3/09	\$26,440.11	purchase of cashier's check # 30035364

All in violation of Title 18, United States Code, Section 1957.

FIRST FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461)

18. The factual allegations contained in Counts 1 through 6 of this Indictment are re-alleged and by this reference fully incorporated here for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. 2461(c).

19. Upon a conviction of any of the offenses alleged in Counts Two through Six, the defendant,

NICOLE BERMUDEZ,

shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to said offense, including but not limited to a sum of money equal to the total proceeds from the commission of said offense including, but not limited to, the following property:

- (a) a sum of money equal to the gross proceeds obtained as a result of the offense.
 - (b) \$801,000 in cash transferred from Seth Sundberg's Borel Bank account to the defendant's Community First Bank account on June 4, 2009.
20. If, as a result of any act or omission of the defendant, any of said property
- (a) cannot be located upon the exercise of due diligence;
 - (b) has been transferred or sold to or deposited with, a third person;
 - (c) has been placed beyond the jurisdiction of the Court;
 - (d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be subdivided without difficulty;

any and all interest defendant has in other property up to the value of the property described in paragraph 19 above, shall be forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461;

All in violation of Title 18, United States Code, Sections 981(a)(1)(C), 1343, 1349; Title 28, United States Code, Section 2461; and Rule 32.2 of the Federal Rules of Criminal Procedure.

SECOND FORFEITURE ALLEGATION: (18 U.S.C. § 982(a)(1))

21. The factual allegations contained in Counts 1 through 12 of this Indictment are re-alleged and by this reference fully incorporated here for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 981(a)(1).

22. Upon a conviction of any of the offenses alleged in Counts Seven through Twelve, the defendant,

NICOLE BERMUDEZ,

shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), all right, title and interest in property, real and personal, involved in said violation, or any property traceable to such property, including but not limited to the following: \$801,000 in cash transferred from Seth Sundberg's Borel Bank account to the defendant's Community First Bank account on June 4, 2009.

23. If, as a result of any act or omission of the defendant, any of said property

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to or deposited with, a third person;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be subdivided without difficulty;

any and all interest defendant has in other property up to the value of the property described in paragraph 22 above, shall be forfeited to the United States pursuant to Title 21, United States

1 Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1);

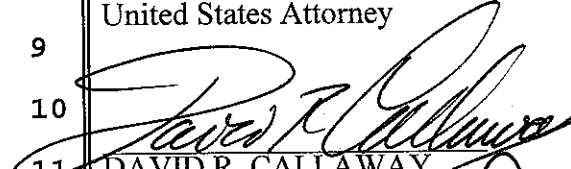
2 All in violation of Title 18, United States Code, Sections 982, 1956, and Rule 32.2 of the
3 Federal Rules of Criminal Procedure.

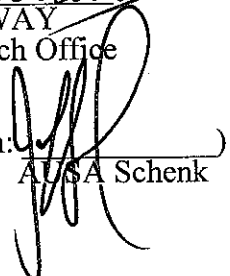
4 DATED:

A TRUE BILL

5
6 
7 FOREPERSON

8 JOSEPH P. RUSSONIELLO
9 United States Attorney

10 
11 DAVID R. CALLAWAY
12 Chief, San Jose Branch Office

13 (Approved as to form: )

14 AUSA Schenk
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DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACT IN - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING
OFFENSE CHARGED

18 U.S.C. § 371 – Conspiracy; 18 U.S.C. § 1343 – Wire Fraud; and 18 U.S.C. § 1957(a) – Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony
PENALTY:

See Attachment

 SEALED BY ORDER
 OF THE COURT
PROCEEDING
 Name of Complainant Agency, or Person (& Title, if any)
 Internal Revenue Service

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW DOCKET NO.

MAGISTRATE CASE NO.

 Name and Office of Person
 Furnishing Information on
 THIS FORM

JOSEPH P. RUSSONIELLO

☒ U.S. Att'y ☐ Other U.S. Agency

 Name of Asst. U.S. Att'y
 (if assigned)

JEFFREY B. SCHENK

 Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT - U.S.

FILED

NICOLE BERMUDEZ 2010 FEB 24 P 3:05

DISTRICT COURT NUMBER

 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 N.D. CA. SAN JOSE
DEFENDANT**IS NOT IN CUSTODY**

- 1) ☒ Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges } ☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

 Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted
ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**
☐ SUMMONS ☐ NO PROCESS*
☒ WARRANT

Bail Amount: No Bail

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

Maximum Penalties for NICOLE BERMUDEZ

Count One - 18 U.S.C. § 371 - Conspiracy

5 years imprisonment
\$250,000 fine, or twice the gross gain or gross loss from the offense
3 years supervised release
\$100 special assessment

Counts Two through Six - 18 U.S.C. § 1343 - Wire Fraud

20 years imprisonment
\$250,000 fine, or twice the gross gain or gross loss from the offense
3 years supervised release
\$100 special assessment

Counts Seven through Twelve - 18 U.S.C. § 1957(a) - Engaging in Monetary Transaction in Property Derived from Specified Unlawful Activity

10 years imprisonment
\$250,000 fine, or twice the amount of the criminally derived property involved in the transaction
3 years supervised release
\$100 special assessment